

U.S. Magistrate Judge J. Kelley Arnold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRANDON STURDEVANT,)	No. C05-5511JKA
)	
Plaintiff,)	
)	STIPULATED PROTECTIVE ORDER
vs.)	FOR DISCLOSURE OF CONFIDENTIAL
)	INFORMATION
YAMAHA MOTOR COMPANY, LTD)	
(Yamaha Hatsudoki, K.K.), a Japanese)	
corporation; YAMAHA CORPORATION)	
OF AMERICA, California corporation; and)	
YAMAHA MOTOR CORPORATION,)	
U.S.A., a California corporation,)	
)	
Defendants.)	

This matter came before the court upon the stipulation of the parties, by and through their respective attorneys, for the entry of an order governing the disclosure and handling of certain documents and information deemed confidential by defendants.

The court, being duly advised, now ORDERS that:

1. Defendants may designate certain items of discovery or other information produced or disclosed to plaintiff as "Produced Pursuant To Protective Court Order," so long as any such designation by defendants is made in good faith and only with respect to items which

1 are trade secrets or other confidential research, development or commercial information, as
2 provided in Fed. R. Civ. P. 26(c). Unless challenged and otherwise ordered as provided in
3 paragraph 3, such designation shall make such items, and the content or substance thereof, and
4 all copies, prints, summaries, or other reproductions of such information confidential and subject
5 to this Order.

6 2. With respect to deposition testimony, the designation of confidentiality may be
7 made on the record, at the time of the deposition, at which time the testimony shall be subject to
8 full protection of this Order. In the case of testimony not so designated during the course of
9 deposition, counsel may, within ten (10) days of receipt of the deposition transcript, notify the
10 parties of the pages of deposition testimony which contain confidential material, in which case
11 the designated pages of testimony shall be subject to this Order.

12 3. If plaintiff wants to challenge the designation of confidentiality of any document
13 or information or testimony, plaintiff's counsel shall notify defendants' counsel of the challenge,
14 in writing, within 45 days before trial, except as to documents or information produced within 45
15 days of trial. A challenge to the confidentiality will not thereafter be permitted unless good
16 cause is shown. If a challenge is made, the parties shall make reasonable and good faith efforts
17 to resolve the disagreement without intervention by the court. If the parties continue to dispute
18 the confidentiality designation, plaintiff may file his objection with the court. Defendants shall
19 have the burden to prove that the challenged document, information, or testimony is entitled to
20 protection under Fed. R. Civ. P. 26(c).

21 4. Confidential information and documents subject to this Order may be disclosed
22 only to (a) the parties named in this action; (b) plaintiff's counsel of record in this litigation, but
23 including members of counsel's legal or support staff (e.g. in-house investigators, secretaries,
24 legal assistants, paralegals, associates, and law clerks), to the extent reasonably necessary for
25 such persons to render assistance in this litigation; (c) experts or consultants specially retained by
26 the parties for assistance in trial preparation or for testimony; (d) the court and court personnel

1 for any purpose the court finds necessary; (e) jurors and court personnel if admitted during trial
2 of this case; and, (f) "other attorneys" if authorized in accordance with paragraph 8 below.

3 5. Disclosures shall be made to such persons identified in paragraph 4 only as
4 necessary and for the sole purpose of prosecuting the above-captioned matter, or in the case of
5 other attorneys described in paragraph 8, the litigation which the other attorney is prosecuting.
6 The above-named persons shall not otherwise disseminate the information and documents
7 subject to this Order or disseminate the substance or content of such information or documents to
8 others not authorized to receive such information.

9 6. Before showing or divulging the contents or substance of confidential information
10 or documents to experts or consultants, plaintiff's counsel shall first provide the proposed
11 recipient a copy of this Order, and shall obtain from each recipient a signed "Non-Disclosure
12 Agreement" in the form attached as "Exhibit A." Plaintiff's counsel shall maintain the original
13 signed agreements and an accurate list of all experts, consultants or persons to whom the
14 information or documents, or copies thereof, were revealed. The list need not be revealed to
15 defendants during the pendency of this litigation unless defendants show good cause to believe
16 that the expert or consultant has not signed the Non-Disclosure Agreement or that confidential
17 documents and information produced in this case have been disseminated or used contrary to the
18 terms of this Order.

19 7. Counsel for plaintiff is authorized to make copies of the information and
20 documents subject to this Order, which may be lent to plaintiff's experts or consultants so long
21 as plaintiff's counsel has first obtained the written agreement of such expert or consultant to be
22 bound by the terms of this Order. Other persons and entities, including without limitation, the
23 parties' experts and consultants, shall not make copies.

24 8. This Order does not restrict or prevent plaintiff's counsel from discussing
25 confidential information and documents with other attorneys who have or had similar litigation
26 against defendants involving Yamaha motorcycles with the same throttle design, provided: (1)

1 such other attorney already properly and separately received such confidential information or
2 document in connection with his or her other litigation; or, (2) such other attorney is given access
3 to duplicate copies of the confidential documents produced in this action subject to the following
4 restrictions and procedures:

5 (a) Another similarly situated plaintiff attorney who desires duplicate copies of
6 confidential documents produced in this action may file a request for such documents
7 with this court, and serve a copy of the request on all counsel of record in this action.

8 (b) Defendants shall have 21 days to file with the court a written objection to the
9 document request. The other attorney must demonstrate the relevance of the requested
10 documents to the collateral proceeding. Disputes over the discoverability of specific
11 materials, including limitations or timeliness issues imposed in the collateral litigation
12 must be resolved by the collateral court.

13 (c) If defendants do not object to the document requests, or if this court overrules
14 defendants' objections, a duplicate set of the documents requested will be produced by
15 defendants to the requesting attorney, unless there is a contrary order from the collateral
16 court which prevents or restricts the other attorney's access to the documents.

17 (d) If access is allowed, the other attorney, before receipt, must sign and provide a
18 "Non-Disclosure Agreement" to defendants in the form attached as Exhibit A. In
19 addition, the requesting attorney shall pay the copy costs.

20 (e) Documents produced by defendants pursuant to this sharing provision shall be
21 subject to all terms of this Order. Documents produced by defendants may not be used
22 for any purpose other than the prosecution of the lawsuit which the other attorney is
23 prosecuting.

24 (f) All confidential documents and information shall be returned to defendants
25 through its counsel of record in this action at the conclusion of the other attorney's
26 litigation.

1 (g) Under no circumstances may persons having access to confidential
2 information or documents under the terms of this Order provide copies of such
3 documents and information to any person not specifically and individually authorized
4 under the terms of this Order to receive such information. This restriction shall apply
5 without limitation to the American Trial Lawyers Association or related state association,
6 the Attorney Information Exchange Group, or any other group or organization
7 maintaining data banks of documents.

8 (h) This court retains jurisdiction with respect to any confidential documents or
9 information which are produced to other attorneys pursuant to this Order.

10 9. All persons allowed access to confidential documents and information shall act to
11 preserve the confidentiality of designated information. If such information is filed with this or
12 any other court, it shall be filed under seal and with notation of the application of this Order.

13 10. The information and documents subject to this Order shall not be made available,
14 for any purpose, to current employees or agents of any motorcycle manufacturers or distributors
15 or component part manufacturers or distributors and/or replacement part manufacturers or
16 distributors. If plaintiff needs to provide information and documents subject to this Order to
17 such persons or entities, plaintiff must first seek and obtain modification of this Order. The
18 parties and court understand that defendants would strenuously object to such disclosure.

19 11. The provisions of this Order relating to confidentiality of documents and
20 information shall remain in full force and effect and continue to be binding even after this
21 litigation is terminated. At the conclusion of this litigation, the confidential information and
22 documents subject to this Order, together with all copies thereof, shall be returned to defendants'
23 counsel at the offices of Martin Bischoff Templeton Langslet & Hoffman LLP, 888 SW 5th
24 Avenue, Suite 900, Portland, Oregon 97204, or any subsequent address designated by
25 defendants. If other attorneys have been provided access to confidential information and
26

1 documents, those documents and information shall be returned no later than at the conclusion of
2 that other attorney's litigation.

3 12. If any party wishes to modify this Order, the party shall first confer with the other
4 parties and, if no satisfactory agreement is reached, may petition the court for modification.
5 Until modification is granted by agreement or order, the terms of this Order will govern.

6 13. This Order does not address disclosure or use of confidential documents or
7 information at the time of trial through receipt into evidence or through the testimony of
8 witnesses. The procedure and use of confidential materials or information at trial shall be made
9 by agreement or by pretrial order governing use and protection of the record. This Order does
10 not prejudice the parties' rights or arguments regarding whether admission of documents or
11 information at trial effects confidentiality.

12 14. The violation by any person of any provision of this Order may be punishable as
13 contempt of court. Further, defendants may pursue any and all civil remedies available for
14 violation of the terms of this Order.

15 DATED: January 20, 2006.

16
17 /s/ J. Kelley Arnold
18 J. Kelley Arnold
19 U.S. Magistrate Judge
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1 **SO STIPULATED AND APPROVED:**

2 GAYLORD EYERMAN BRADLEY, P.C.

3 By: _____
4 Linda K. Eyerman, WSBA #32193
5 William A. Gaylord, *pro hac vice*, OSB #73104
Of Attorneys for Plaintiff

6
7 MARTIN, BISCHOFF, TEMPLETON,
8 LANGSLET & HOFFMAN, LLP

9 By: _____
10 John W. Knottnerus, WSB #22643
11 Jonathan M. Hoffman, *pro hac vice*, OSB #75418
Of Attorneys for Yamaha Motor Corporation, U.S.A.
and Yamaha Motor Company, Ltd.

“EXHIBIT A”

LIMITED SPECIAL APPEARANCE AND AGREEMENT
FOR ACCESS TO CONFIDENTIAL DOCUMENTS

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the court in the above-captioned action on _____. I understand the terms of the Protective Order and under oath consent to be bound by the terms of the Protective Order as a condition to being provided access to the confidential information and documents furnished by defendants in this matter. Further, by executing this Agreement, I hereby consent to the jurisdiction of the above-captioned court for the special and limited purpose of enforcing the terms of the court’s Protective Order. Notices and service may be sent to me at the address listed below.

I recognize that any breach of this agreement may be punishable as a contempt of court. I further understand that all civil remedies for breach of this agreement are specifically reserved by defendants and are not waived by the disclosure provided for herein. Further, in the event of a breach of this agreement, I recognize that defendants may pursue all remedies available to them.

Dated this _____ day of _____, 200_____.

Name: _____
Address: _____

Telephone: _____